

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2019-XXXX

IN THE MATTER OF  
CARLOS C. LOURENCO DAIRY  
MERCED COUNTY

This Order is issued to Carlos C. Lourenco (Discharger) pursuant to California Water Code (Water Code) section 13350, which authorizes the imposition of Administrative Civil Liability. This Order is based on findings that the Discharger violated provisions of Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order).

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Discharger owns and operates the Carlos C. Lourenco Dairy (Dairy), located at 6557 Oak Avenue, Merced, Merced County.
2. The Dairy is currently regulated by the *Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies*, Order R5-2013-0122 (Reissued General Order) which was adopted by the Central Valley Water Board on 3 October 2013. The Reissued General Order replaces the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035. The Reissued General Order is a set of general waste discharge requirements that apply to owners and operators of existing milk cow dairies that (1) submitted a Report of Waste Discharge in response to the Central Valley Water Board's 8 August 2005 request and (2) have not expanded operations since 17 October 2005.
3. The Discharger submitted a Report of Waste Discharge on 12 October 2005 and enrolled the Dairy under the Reissued General Order. The Dairy is authorized to house a maximum of 1,300 mature dairy cows and currently houses approximately 1,400 cows. As an enrolled facility, the Dairy is subject to the requirements of the Reissued General Order for regulatory purposes.
4. Discharger's Dairy abuts the east side of Black Rascal Creek, to the South of Oak Avenue in Merced, California. Black Rascal Creek flows to Bear Creek. Bear Creek enters the San Joaquin River at the San Luis National Wildlife Refuge.
5. On 19 October 2017, Central Valley Water Board staff received a complaint alleging an active discharge of dairy wastewater into Black Rascal Creek from the Discharger's Dairy. That same day, Central Valley Water Board staff investigated and observed a large volume of lagoon wastewater discharging from Discharger's Dairy into Black Rascal Creek. During the 19 October 2017

inspection, Central Valley Water Board staff identified the following violation of the Reissued General Order.

6. Reissued Dairy General Order Prohibition A.4. states:

*“The collection, treatment, storage, discharge or disposal of wastes at an existing milk cow dairy shall not result in the creation of a condition of pollution or nuisance.”*

7. Liability for this violation may be imposed pursuant to Water Code Section 13350. Water Code section 13350 states, in part:

*“Any person who . . . (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”*

Subdivision (e) provides, in part:

*“The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both. (2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.”*

8. Water Code section 13050 subdivision (l) defines pollution as an “alteration of the quality of waters of the state to a degree which unreasonably affects . . . the waters beneficial uses,” including “contamination.”
9. On 19 October 2017, the Central Valley Water Board staff received a complaint from Merced Irrigation District of an active discharge of dairy wastewater from Discharger’s Dairy into Black Rascal Creek, south of Oak Avenue. Merced Irrigation District’s staff observed the discharge at approximately 10:40 a.m. on 19 October 2017. In response to this complaint, California Department of Fish and Wildlife (Fish and Wildlife) and Central Valley Water Board staff inspected the Dairy.
10. Central Valley Water Board staff arrived at the Dairy on 19 October 2017 and began to inspect the Dairy by driving around the western cropland perimeter. During the inspection, Central Valley Water Board staff observed a large volume of tailwater comprised of dairy lagoon wastewater blended with fresh irrigation water being discharged into Black Rascal Creek. Staff observed Field 1 (100 acres) and Field 3 (35 acres) draining tailwater into a pipeline flowing into Black Rascal Creek. Central Valley Water Board staff were told that irrigation of the fields had begun the previous day at approximately 0600. Discharger’s employee

explained to Fish and Wildlife wardens that an irrigation valve was mistakenly open during the irrigation and allowed water to discharge from the Dairy's cropland into Black Rascal Creek.

11. On 19 October 2017, Central Valley Water Board staff conducted a field test for Total Ammonia and observed that it exceeded 6 parts per million (ppm) at the point of discharge into Black Rascal Creek. Central Valley Water Board staff took additional samples summarized in Table 1 of the 19 October 2017 Inspection Report. According to the Discharger's Priority Reporting of Significant Event, no additional samples were taken by Discharger.
12. Merced Irrigation District employees estimated that the flow rate of the discharge was approximately 448.8 gallons per minute.
13. On 19 October 2017 wardens from Fish and Wildlife measured the discharge flowrate into Black Rascal Creek to be approximately 5 gallons per second. Warden Nelson used a 10-gallon bucket to determine that the flow rate was approximately 300 gallons per minutes or 18,000 gallons per hour.
14. Central Valley Water Board staff observed that the wastewater level in Wastewater Storage Pond 1 had been lowered by approximately 10 feet.
15. At approximately, 1550 p.m. on 19 October 2017, Central Valley Water Board staff observed that a series of valves along the discharging pipeline were closed by an employee of Discharger's Dairy. After the valves were closed, the discharge to Black Rascal Creek ceased. In addition, Central Valley Water Board staff observed the same employee redirect tailwater from the cropland to the wastewater lagoon instead of to Black Rascal Creek.
16. On 30 November 2017, Central Valley Water Board staff issued a Notice of Violation to the Discharger based on the discharge event of 19 October 2017.
17. On 13 November 2018, the Central Valley Water Board staff issued a pre-filing settlement letter notifying the Discharger that Central Valley Water Board staff was in the process of assessing civil liability for the 19 October 2017 discharge.
18. On 11 March 2019, the Assistant Executive Officer, lead prosecutor for the Prosecution Team, issued Administrative Civil Liability Complaint (Complaint) No. R5-2019-0505 to the Discharger recommending that the Central Valley Water Board assess the Discharger an administrative civil liability in the amount of \$93,594.01 pursuant to Water Code section 13350 for discharge of 116,064 gallons of dairy wastewater to Black Rascal Creek.
19. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.

20. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed, the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on the violator's ability to continue business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
21. On 4 April 2017 the State Water Resources Control Board adopted Resolution No. 2017-0030 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 5 October 2017. The Enforcement Policy establishes a methodology for assessing discretionary administrative civil liability. Use of the methodology addresses the factors used to assess a penalty under Water Code section 13327. The required factors under Water Code section 13327 have been considered using the methodology in the Enforcement Policy as explained in detail in Attachment A to this Order and shown in the Penalty Calculation for Civil Liability spreadsheet in Attachment B of this Order. Attachment A is attached hereto and incorporated herein by reference.
22. This Order is effective and final upon issuance by the Central Valley Water Board. Payment must be received by the Central Valley Water Board no later than thirty (30) days from the date on which this Order is issued.
23. Issuance of this Administrative Civil Liability Order to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
24. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or her delegee is authorized to refer this matter to the Attorney General's Office for enforcement.
25. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the [State Waterboard's Water Quality web page](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) ([http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)) or will be provided upon request.

IT IS HEREBY ORDERED THAT:

27. Pursuant to Water Code section 13323, Carlos C. Lourenco shall be assessed administrative civil liability in the amount of ninety-three thousand five hundred and ninety-four dollars and one cent (\$93,594.01).

28. Payment shall be made in the form of a check made payable to the State Water Pollution Cleanup and Abatement Account no later than thirty days from the date of issuance of this Order.

I, Patrick Pulupa, Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region, and that such action occurred on 1-2 August 2019 Board meeting.

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Patrick Pulupa  
Executive Officer

Attachment A: Specific Factors Considered for Administrative Civil Liability